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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/086,657	02/28/2002	John A. Scott	112056-0035	2276

24267 7590 04/26/2005
CESARI AND MCKENNA, LLP
88 BLACK FALCON AVENUE
BOSTON, MA 02210

EXAMINER

CONTINO, PAUL F

ART UNIT	PAPER NUMBER
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2114

DATE MAILED: 04/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/086,657

Applicant(s)

SCOTT, JOHN A.

Examiner

Paul Contino

Art Unit

2114

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 April 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☒ Applicant's reply has overcome the following rejection(s): 35 USC 112 second paragraph antecedent basis rejections for claims 19-20, 27-28, and 35-36.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 6.

Claim(s) objected to: 16, 24 and 32.

Claim(s) rejected: 1-5, 7-15, 17-20, 22, 23, 25-31 and 33-39.

Claim(s) withdrawn from consideration: 21.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____

13. ☐ Other: _____


SCOTT BADERNA
PRIMARY EXAMINER

ADVISORY ACTION

Allowable Subject Matter

1. Claim 6 is allowed.
2. Claims 16, 24, and 32 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 101

3. Claim 39 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Electromagnetic signals may not be patented.

Claim Rejections - 35 USC § 102

4. Claims 8 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Bhanot et al. (U.S. Patent 5,796,934).
5. Claims 1-4 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Sundaresan et al. (U.S. PGPub 2003/0033412 A1).

Claim Rejections - 35 USC § 103

6. Claims 5, 7, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sundaresan et al. in view of Gronke (U.S. PGPub 2002/0071386).

7. Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bhanot et al. as applied to claim 8, in view of Sundaresan et al.

8. Claims 14-15, 17-23, 25-31, and 33-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over French et al. (U.S. Patent No. 6,745,241 B1) in view of Sundaresan et al, further in view of Gronke.


Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Contino whose telephone number is (571) 272-3657. The examiner can normally be reached on Monday-Friday 7:30 am - 5:00 pm, first Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Beausoliel can be reached on (571) 272-3645. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-3657.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PFC
April 18, 2005



SCOTT BADERMAN
PRIMARY EXAMINER